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MAY 26 1950
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

Nos. 695, 696

BENTLY S. HANDWORK, RALPH C. BOOZER, AND PHILIP W. LOTZ, INDIVIDUALLY AND AS TRUSTEES, ETC.,
Petitioners,

vs.

HORACE A. YOUNG, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF GEORGE R. JOSLYN, BANKRUPT,
Respondent.

REPLY OF PETITIONER TO RESPONSE OF RESPONDENT TO PETITION FOR REHEARING.

BENTLY S. HANDWORK,
RALPH C. BOOZER,
PHILIP W. LOTZ,
Individually and as Trustees, etc.,
By HOMER D. DINES,
JOSEPH A. CONERTY,
ROBERT MCCLORY,
Their Attorneys.

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Of Counsel.

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MAY IT PLEASE THE COURT:

The petitioners, by their attorneys, present herewith their Reply to the Response of respondent to their Petition for Rehearing and state as follows:

I.

The Petition for Rehearing heretofore filed herein set forth substantial grounds for granting certiorari not previously presented to this court. Respondent argues that the certificate of counsel attached to the Petition for Re-

hearing did not comply with Rule 33 of this court in this respect, and then attempts to show that the petition did not set forth grounds for granting a rehearing. This argument, in addition to its technical nature, is without foundation.

The certificate of counsel was revised prior to the filing of the Response, and, in addition, the arguments set forth in the Petition for Rehearing are substantial grounds not previously presented.

II.

The general public importance of the questions involved in our petition for certiorari was not previously presented to this court.

Inasmuch as it has been shown that the Court of Appeals decided a question of Illinois law in conflict with the Illinois decisions (Cert. Petn. 11-21) the additional fact that the effect of the erroneous decision will be far reaching is a substantial ground for allowing certiorari not previously presented to this court.

Respondent denies that Illinois spendthrift trusts would be affected by the Court of Appeals' decision (Response 4). He refers this court to decisions cited in his Brief in opposition to our Petition for Certiorari. He neglected, however, to apprise this court of the fact that *Blair* v. *Lynn*, 274 Ill. App. 23, and *Blair* v. *Commissioner* 300 U. S. 5 (being two of the five cases relied upon by him) involved spendthrift trusts containing precise and technical language against creditors and against anticipation by the beneficiaries. This is the situation with respect to innumerable so-called spendthrift trusts. Respondent also neglected to comment upon the fact that under Illinois law all trusts, except those for the benefit of the settlor, are considered "spendthrift trusts." This substantial ground for rehear-

ing, not previously presented to this court, emphasizes that all such Illinois trusts would be subject to destruction or dissipation by the decision of the Court of Appeals.

III.

While in our Petition for Certiorari we relied principally upon the point that the Court of Appeals had disregarded the law of Illinois as set forth in the case of *Hummel* v. *Cardwell*, 390 Ill. 526, cert. den. 327 U. S. 796, we emphasized under point III of our Petition for Rehearing that the Court of Appeals had also rendered a decision in conflict with the prior decision of this court in *Eaton* v. *Boston Trust Co.*, 240 U. S. 427, another substantial ground not previously presented to this court in this connection.

IV.

The final substantial ground not previously presented to this court involved the question of whether or not the two judgments of the Court of Appeals constituted a final decision from which a Petition for Certiorari in this court would lie. Our request to this court (not previously made) to resolve this question, was for the purpose of clarifying future proceedings in this case. The right of this court to deny certiorari "for want of jurisdiction," for the reason that there was no final order upon which certiorari might be based, is authorized by the decisions of this court referred to in our Petition for Rehearing (p. 7.)

Conclusion.

WHEREFORE, petitioners pray that this Court may grant a rehearing and reconsider its order denying certiorari herein, or in the alternative, that the order denying certiorari may be amended to recite that denial of certiorari was for

the reason that the judgment of the Court of Appeals was not final and appealable.

Respectfully submitted,

BENTLY S. HANDWORK,
RALPH C. BOOZER,
PHILIP W. LOTZ,
Individually and as Trustees, etc.,
By HOMER D. DINES,
JOSEPH A. CONERTY,
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Their Attorneys.

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Of Counsel.

CERTIFICATE.

I HEREBY CERTIFY that I am one of the attorneys for the petitioners in the above entitled cause and that I am a member of the Bar of this Court. I further hereby certify that said Petition for Rehearing and the foregoing Reply are presented in good faith and not for purposes of delay and that the grounds specified for a rehearing are substantial grounds available to petitioners although not previously presented to this Court.

HOMER D. DINES.